should be allowed as a deduction, and it held, and I quote from the Sherman Case:

"'Neither the amount of the state tax, nor the amount of the federal inheritance tax imposed under the War Revenue Act of 1898, was deductible, because each was a tax, not upon property, but upon succession—that is, a tax on a legatee for the privilege of succeeding to the property—and was payable out of his legacy, not out of the estate'—a tacit evincement that if the federal tax had been upon the estate, and not upon the legacies, it would have been deductible from the assets of the estate before computing the state transfer tax. Previous to the decision in the Gihon Case, the Supreme Court of Massachusetts, in Hooper *v.* Shaw, 176 Mass. 190, 57 N. E. 361, decided that the legacy tax of the War Revenue Act of June 13, 1898, c. 448, 30 Stat. 448, should be deducted in ascertaining the state's succession tax. In view of the fact that both federal and state taxes were imposed upon the same successions and were payable by the beneficiaries, it is difficult to reconcile the deliverance in that case to the principles of the Gihon Case. The appraisement upon which the tax was assessed will be reduced by the sum of the federal tax.

"P. S.—Since writing the above, my attention has been called to the case of Corbin *v.* Townshend, 103 Atl. 647, in which the Supreme Court of Connecticut decided that the federal tax is to be deducted from the appraisement in computing the state's succession tax."

---

**Trade-Marks and Trade Names—Character of Right—Priority of Appropriation.**—In United Drug Co. *v.* Theodore Rectanus Co., 39 Sup. Ct., it was held that the adoption of trade-mark in connection with proprietary medicine sold in Massachusetts and neighboring states did not, in absence of valid legislation project adopter's right of protection in advance of extension of her trade, or operate as claim of territorial rights over areas into which it was thereafter advisable to extend trade, as Kentucky, where Massachusetts adopter was subject to rights of prior user of name in Kentucky.

The essential facts are as follows: About the year 1877, Ellen M. Regis, a resident of Haverhill, Mass., began to compound and distribute in a small way a preparation for medicinal use in cases of dyspepsia and some other ailments, to which she applied as a distinguishing name the word "Rex." In 1898 she recorded the word as a trade-mark under the laws of Massachusetts and in 1900 procured its registration in the United States Patent Office. In 1911, petitioner purchased the business with the trade-mark right, and has carried it on in connection with its other business, which consists in the manufacture of medicinal preparations, and their distribution and sale through retail drug stores, known as "Rexall

stores," situate in the different states of the Union, four of them being in Louisville, Ky.

Meanwhile, about the year 1883, Theodore Rectanus, a druggist in Louisville, familiarly known as "Rex," employed this word as a trade-mark for a medicinal preparation known as a "blood purifier." He continued this use to a considerable extent in Louisville and vicinity, spending money in advertising and building up a trade, so that—except for whatever effect might flow from Mrs. Regis' prior adoption of the word in Massachusetts, of which he was entirely ignorant—he was entitled to use the word as his trade-mark. In the year 1906 he sold his business, including the right to the use of the word, to respondent; and the use of the mark by him and afterwards by respondent was continuous from about the year 1883 until the filing of the bill in the year 1912 in which petitioner sought to enjoin the use of the trade name "Rex" by respondent. Petitioner's first use of the word "Rex" in connection with the sale of drugs in Louisville or vicinity was in April, 1912.

The court said: "There is no such thing as property in a trade-mark except as a right appurtenant to an established business or trade in connection with which the mark is employed. The law of trade-marks is but a part of the broader law of unfair competition; the right to a particular mark grows out of its use, not its mere adoption; its function is simply to designate the goods as the produot of a particular trader and to protect his good will against the sate of another's product as his; and it is not the subject of property except in connection with an existing business. Hanover Milling Co. *v.* Metcalf, 240 U. S. 403, 412-414, 36 Sup. Ct. 357, 60 L. Ed. 713

The owner of a trade-mark may not, like the proprietor of a patented invention, make a negative and merely prohibitive use of it as a monopoly See United States *v.* Bell Telephone Co., 167 U. S. 224, 250, 17 Sup. Ct. 809, 42 L. Ed. 144; Bement *v.* National Harrow Co., 186 U. S. 70, 90, 22 Sup. Ct. 747, 46 L. Ed. 1058; Paper Bag Patent Case, 210 U. S. 405, 424, 28 Sup. Ct. 748, 52 L. Ed. 1122.

"In truth, a trade-mark confers no monopoly whatever in a proper sense, but is merely a distinguishing mark or symbol—a protection of one's good-will in trade by placing a distinguishing mark or symbol—a commercial signature—upon the merchandise or the package in which it is sold.

"It results that the adoption of a trade-mark does not, at least in the absence of some valid legislation enacted for the purpose, project the right of protection in advance of the extension of the trade, or operate as a claim of territorial rights over areas into which it thereafter may be deemed desirable to extend the trade. And the expression, sometimes met with, that a trade-mark right is not lim-

ited in its enjoyment by territorial bounds, is true only in the sense that wherever the trade goes, attended by the use of the mark, the right of the trader to be protected against the sale by others of their wares in the place of his wares will be sustained.

"Property in trade-marks and the right to their exclusive use rest upon the laws of the several states, and depend upon them for security and protection; the power of Congress to legislate on the subject being only such as arises from the authority to regulate commerce with foreign nations and among the several states and with the Indian tribes. Trade-Mark Cases, 100 U. S. 82, 93, 25 L. Ed. 550. * * * * *

"It is not contended, nor is there ground for the contention, that registration of the Regis trade-mark under either the Massachusetts statute or the act of Congress, or both, had the effect of enlarging the rights of Mrs. Regis or of petitioner beyond what they would be under common-law principles. Manifestly the Massachusetts statute (Acts 1895, p. 519, c. 462) could have no extraterritorial effect. And the Act of Congress of March 3, 1881 (21 Stat. 502, c. 138), applied only to commerce with foreign nations or the Indian tribes, with either of which this case has nothing to do. See Ryder *v.* Holt, 128 U. S. 525, 9 Sup. Ct. 145, 32 L. Ed. 529. Nor is there any provision making registration equivalent to notice of rights claimed thereunder. The Act of February 20, 1905 (33 Stat. 724, c. 592 [Comp. St. 1916, § 9485 et seq.] ), which took the place of the 1881 act, while extending protection to trade-marks used in interstate commerce, does not enlarge the effect of previous registrations, unless renewed under the provisions of its twelfth section, which has not been done in this case; hence we need not consider whether anything in this act would aid the petitioner's case.

"Undoubtedly, the general rule is that, as between conflicting claimants to the right to use the same mark, priority of appropriation determines the question. See Canal Co. *v.* Clark, 13 Wall. 311, 323, 20 L. Ed. 581; McLean *v.* Fleming, 96 U. S. 245, 251, 24 L. Ed. 828; Manufacturing Co. *v.* Trainer, 101 U. S. 51, 53; 25 L. Ed. 993; Columbia Mill Co. *v.* Alcorn, 150 U. S. 460, 463, 14 Sup. Ct. 151, 37 L. Ed. 1144. But the reason is that purchasers have come to understand the mark as indicating the origin of the wares, so that its use by a second producer amounts to an attempt to sell his goods as those of his competitor. The reason for the rule does not extend to a case where the same trade-mark happens to be employed simultaneously by two manufacturers in different markets separate and remote from each other, so that the mark means one thing in one market, an entirely different thing in another. It would be a perversion of the rule of priority to give it such an application in

our broadly extended country that an innocent party who had in good faith employed a trade-mark in one state, and by the use of it had built up a trade there, being the first appropriator in that jurisdiction, might afterwards be prevented from using it, with consequent injury to his trade and good will, at the instance of one who theretofore had employed the same mark, but only in other and remote jurisdictions, upon the ground that its first employment happened to antedate that of the first-mentioned trader. In several cases federal courts have held that a prior use of a trade-mark in a foreign country did not entitle its owner to claim exclusive trade-mark rig ts in the United States as against one who in good faith had adopted a like trade-mark here prior to the entry of the foreigner into this market. Richter *v.* Anchor Remedy Co. (C. C.), 52 Fed. 455, 458; Richter *v.* Reynolds, 59 Fed. 577, 579, 8 C. C. A. 220; Walter Baker & Co. *v* Delapenha (C. C.), 160 Fed. 746, 748; Gorham Mfg. Co. *v.* Weintraub (D. C.), 196 Fed. 957, 961."

## MISCELLANY.

**How Great Law Offices Work.**—"If I were a young lawyer again, just striving for my first honors, and looking for a place to settle," said a leading New York lawyer to a young attorney, "I am sure I could not do better than begin right here in New York City or in Brooklyn. I have passed through the mill and my experience has convinced me that there are more openings here, and there is as much chance to get to the top, and when you do get there the rewards are far greater than anywhere else in the United States."

Whether the General is right or not, it is highly probable that he will be supported in this opinion by the greater part of the well-established lawyers of the two cities. Nevertheless a great deal can be said on the other side of the question.

The remarkable changes that have taken place within the last ten years in all the great cities of the United States, but more particularly in this city, in the organization of great law firms and in the conduct of their business has compelled the law clerk or the young lawyer to become a part of a rigid system that without doubt repels the more ambitious.

The old practice of a young man just admitted of "hanging out his shingle," as the saying goes, has become nothing more than a tradition. In this city more than 99 per cent. of the young lawyers do not even take desk room as independent practitioners, but become law clerks. That means working under orders, submitting to the drudgery that the older clerks will not endure and sinking one's